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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/085,519	02/28/2002	Jean-Christophe Audonnet	454313-2250.1	1340
20999	7590	05/18/2004	EXAMINER	
FROMMER LAWRENCE & HAUG 745 FIFTH AVENUE- 10TH FL. NEW YORK, NY 10151			LUCAS, ZACHARIAH	
			ART UNIT	PAPER NUMBER
			1648	

DATE MAILED: 05/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT      PAPER

DATE MAILED:

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Commissioner for Patents

Advisory Action

<b>Advisory Action</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/085,519	AUDONNET ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Zachariah Lucas	1648	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 April 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a)  The period for reply expires 3 months from the mailing date of the final rejection.
- b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1.  A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2.  The proposed amendment(s) will not be entered because:
  - (a)  they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b)  they raise the issue of new matter (see Note below);
  - (c)  they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d)  they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_.

3.  Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5.  The a) affidavit, b) exhibit, or c) request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6.  The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7.  For purposes of Appeal, the proposed amendment(s) a) will not be entered or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: \_\_\_\_\_.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8.  The drawing correction filed on \_\_\_\_\_ is a) approved or b) disapproved by the Examiner.

9.  Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.

10.  Other: \_\_\_\_\_.

Continuation of 5. does NOT place the application in condition for allowance because: the additional arguments in traversal of the obviousness rejection presented in the paper filed on April 26, 2004 are not found persuasive. The newly added argument in traversal of the rejection is based on the teachings of the Schultz et al. reference (Intervirology 43: 197-217), which the Applicant argues provides teachings indicating that the efficacy of DNA vaccines in mice does not extrapolate to the efficacy of such vaccines in larger animals. However, the reference does not teach that such vaccines were not effective in larger animals, but that "DNA vaccines were less effective" in larger animals. Further, in addition to teaching that the vaccines were less effective, the reference continues by teaching that responses to DNA vaccines have been seen in swine and dogs, and by providing examples of means by which the efficacy of DNA vaccines can be improved; such as by the combination of additional immunomodulators and immunostimulants with the DNA vaccine encoding the antigens. These teachings therefore appear to parallel the teachings of Morein, described in the prior action, wherein the reference teaches that BPIV-3 pypeptide antigens were effective in mice, but were not effective in lamb without an adjuvant. Thus, as was indicated in the Final rejection, the claimed compositions are obvious over the prior art because the claims read on compositions "comprising" the indicated plasmids. However, as was also indicated in the prior action, in view of the Applicant's arguments regarding the unexpected efficacy of the vaccine in the absence of other immunostimulants or adjuvants, were the claims to more narrowly read on such compositions (e.g. using "consisting of" language instead of "comprising" in the transitional phrase of the claim) the rejection would likely be overcome.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zachariah Lucas whose telephone number is 571-272-0905. The examiner can normally be reached on Monday-Friday, 8 am to 4:30 pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Housel can be reached on 571-272-0902. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Z. Lucas  
Patent Examiner

  
JAMES C. HOUSEL 5/17/04  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600